No. 95-63 (4)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term 1995

In re CHATEAUGAY CORPORATION,
REOMAR, INC.,
THE LTV CORPORATION, *et al.*,

Debtors.

LTV STEEL COMPANY, INC.,
BCNR MINING CORPORATION,
NEMACOLIN MINES CORPORATION, and
TUSCALOOSA ENERGY CORPORATION,

Petitioners,

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY; THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, MICHAEL H. HOLLAND, as Trustee of the Combined Fund, and WILLIAM P. HOBGOOD, as Trustee of the Combined Fund,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

LTV Steel asks this Court to decide whether the Court of Appeals for the Second Circuit properly interpreted the Coal Act. The Second Circuit held that the Coal Act imposed statutory liability upon LTV Steel for mine worker retiree benefits, based *exclusively* upon pre-petition contracts, after LTV Steel's liability under the same contracts had been terminated by a final judgment and was discharged in bankruptcy. Respondents acknowledge that LTV Steel's contractual obligations for these benefits were discharged in bankruptcy and terminated by final judgment. In opposition to LTV Steel's petition they assert, however, that because the Coal Act was enacted after the filing of LTV Steel's petition, obligations under the Coal Act are unaffected by the bankruptcy discharge or the final judgment.

Respondents' assertion is unfounded. Respondents treat the issue raised by LTV Steel's petition as merely a question of retroactivity. Their argument depends upon their assumption that liability under the Coal Act is different from liability under the contracts. But that is the question presented to the Court. The liability is exactly the same: both the contracts and the Coal Act require payment of funds to the same trust for the same health benefits to the same retired mineworkers. More importantly, the Coal Act imposes liability *exclusively* as a consequence of those prior contracts. Because they do not acknowledge these facts, respondents fail to address, let alone refute, the petition's central contention that, as to LTV Steel, the Second Circuit's construction of the Coal Act violates both the Bankruptcy Code and the separation of powers doctrine.

Respondents' arguments conflict with both settled principles of jurisprudence and with the Constitution. "A single

transaction ordinarily gives rise to but one claim by one person against another." RESTATEMENT (SECOND) OF JUDGMENTS, § 24 at ¶c (1982). "Mere adoption of new statutory provisions does not defeat claim preclusion, however, if a single closed transaction is involved." 18 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4411 (1981). The separation of powers doctrine, which bars Congress from legislatively changing the outcome of a judgment between two parties, even when it may retroactively change the law as to others, is also implicated where legislation is construed to effect the reversal of a prior final judgment.

Respondents' subsidiary points merit only brief response. They contend that no split in the Circuits warrants review of the Second Circuit's decision, asserting that no other Circuit has addressed the interaction between the Coal Act and the Bankruptcy Code. This assertion is inaccurate. First, a court in another Circuit has held, in opposition to the Second Circuit's decision, that Coal Act claims may be discharged in bankruptcy. *See In re CF&I Fabricators of Utah, Inc.*, 169 B.R. 984, 988, 992 (D. Utah 1994).[1] Just as in this case, the CF&I bankruptcy filing preceded the enactment of the Coal Act. In dismissing on mootness grounds the Fund's appeal

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1. The Combined Fund argues here that it could not have filed claims in the LTV Steel case. However, on January 25, 1993 the Combined Fund filed proofs of claim under the Coal Act in the CF&I bankruptcy, after the bar date in that case had been extended to permit their assertion of such claims. *See In re CF&I Fabricators,* 169 B.R. at 988. The Combined Fund made no attempt to have the bar date extended or to file claims in the LTV Steel case.

from an order discharging Coal Act claims against the debtor, that court relied upon the Seventh Circuit's decision in *In re UNR Industries, Inc.*, 20 F.3d 766 (7th Cir.), *cert. denied*, 115 S.Ct. 509 (1994), which held that future claims for medical payments on account of pre-petition asbestos-related injuries were ''claims'' which are properly addressed in bankruptcy.[2]

Second, the issue raised by this petition is not narrowly limited to Coal Act claims, but is addressed to the interpretation of a key provision of the Bankruptcy Code, the term ''claim''. The Second Circuit's decision limits the definition of ''claim'' sharply, holding that a statute enacted post-petition could not create a pre-petition claim, even when pre-petition acts are the exclusive basis for liability. This holding creates a conflict with *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 3 F.3d 200 (7th Cir. 1993). The Second Circuit's analysis extends well beyond the Coal Act itself, and therefore sharpens the conflict among the Circuits as to the appropriate reach of ''claim'' where legislation triggers future liability based upon past acts.

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2. The court noted the Fund's ''strategic gamble'' in submitting its claims, and commented on

> ''the Funds' misunderstanding of the power a bankruptcy court has over all potential 'claims' in bankruptcy. For example, the Funds argue that the Bankruptcy Court erred in characterizing CF&I's Coal Act obligations as 'claims' and then discharging them, because they were merely future month-to-month obligations that hadn't yet come due. Judge Easterbrook's opinion in *[UNR Industries]* however, clearly addresses that argument and rejects it.'' *In re CF&I Fabricators*, 169 B.R. at 992.

Contrary to respondents' insinuations, this is not a narrow or esoteric issue, unlikely to arise again. The scope of the term "claim" is constantly before the courts. For example, since this petition was filed the Eleventh Circuit has ruled, in opposition to the Second Circuit, that a pre-petition "claim" exists, even where injury occurs post-petition, if the injured party has some pre-petition relationship with the debtor's product or pre-petition conduct. *Epstein* v. *Official Committee of Unsecured Creditors*, 58 F.3d 1573, 1577 (11th Cir. 1995).[3] Congress may be expected to continue to enact legislation addressing newly discovered injuries arising from long past acts. The issue will continue to arise.

Finally, respondents argue that LTV Steel failed to preserve its separation of powers argument. They are wrong. In its brief to the Second Circuit, LTV Steel raised exactly the arguments raised in its petition.

> Secondly, if the Coal Act were found to permit recovery of these claims, then, as applied to LTV Steel it would violate the separation of powers doctrine. It has long been the law that 'if Congress may by legislation reverse or vacate the final judgments of the Federal courts, then Congress has rendered the whole function of the judiciary futile.' *Plaut* v. *Spendthrift Farm, Inc.*, 1 F.3d 1487, 1499 (6th Cir. 1993), *petition for cert. filed*, (U.S. Jan. 11, 1994) (citing *Hayburn's Case*, 2 U.S. (2 Dall.) 409

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3. The issue arises in many contexts. *See, e.g., In re Savage Indus., Inc.*, 43 F.3d 714, 720 (1st Cir. 1994) (discussing requirement that persons who may have future claims against a debtor be given notice of sale free and clear of such claims).

(1792) (where court refused to enforce a law that provided for executive review of court's decision).

* * *

The same rule applies where the final judgment concerns a right derived from a contract. For example, in *McCullough* v. *Virginia*, 172 U.S. 102, 122-23 (1898), after a final judgment had issued regarding the right to pay taxes with coupons from state issued bonds, the legislature effectively nullified that right by statute. The Supreme Court held:

'It is not within the power of a legislature to take away rights which have been once vested by a judgment. Legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into judgment the power of the legislature to disturb the rights created thereby ceases.'

Brief of LTV Steel at 20-21, submitted on appeal to the Second Circuit, Docket No. 94-6024.

CONCLUSION

The decision of the Court of Appeals for the Second Circuit raises two important federal questions. Each merits review by *certiorari*. Petitioners respectfully request that their petition be granted.

Dated: New York, New York
September 20, 1995

Respectfully submitted,

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